

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation Against:

Chantel Michael Smith
8800 Loma Vista Road
Apple Valley, CA 92308
Or
P O Box 91707
Santa Barbara, CA 93190

Registered Nurse License No. 622487

Respondent.

Case No. 2008-34

OAH No. L2008120266

DECISION

The attached proposed decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on July 8, 2009.

IT IS SO ORDERED this 8th day of June, 2009.



Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSING
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CHANTEL MICHAEL SMITH,

Registered Nurse License 622487

Respondent.

Case No. 2008-34

OAH No. L2008120266

PROPOSED DECISION

This matter was heard by Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in Santa Barbara, California, on March 13, 2009.

Christina Thomas, Deputy Attorney General, represented Ruth Ann Terry, M.P.H., R.N. (complainant).

Chantel Michael Smith (respondent) represented herself.¹

Complainant seeks to discipline respondent's license on the basis of respondent's abuse of controlled substances. Respondent did not dispute the facts, but presented evidence in support of continued licensure.

Oral and documentary evidence was received at the hearing. The record was left open for respondent to submit additional evidence in support of her rehabilitation. On March 26, 2009, two letters from counselors at Casa Serena, Inc., a residential rehabilitation facility, were submitted on respondent's behalf, which letters have been collectively marked for identification as Exhibit A. No objections were received by the April 1, 2009, deadline, and Exhibit A was received in evidence. The matter was submitted for decision on April 1, 2009.

FACTUAL FINDINGS

1. Complainant filed the Accusation in her official capacity as Executive Officer, Board of Registered Nursing (Board), Department of Consumer Affairs, State of California.

2. On July 24, 2003, the Board issued Registered Nurse License number 622487 to respondent. The license, which has not been previously disciplined, expired on October 31, 2008.

¹ Respondent testified that she had changed her last name to her maiden name of "Jeffers." The name "Smith" is the one found in licensure records submitted by complainant.

3. On August 12, 2006, respondent used Vicodin and marijuana, controlled substances.

4. On November 9, 2006, respondent used alcohol and cocaine.

5. On January 2, 2007, respondent was arrested after a bindle of cocaine belonging to her and two others was confiscated in her motel room.

6. Respondent is 32 years old. Multiple setbacks in the past, including losing her mother at 15 years of age and suffering a knee injury in college, led to substance abuse. She has stopped using the substances and has enrolled in rehabilitation programs in the past, but has suffered relapses. One of the rehabilitation programs she entered was at Zona Seca Drug Diversion Program, a one-year program she successfully completed on August 6, 2008.² Respondent also self-referred to the Board's Drug Diversion Program on March 11, 2005, but was terminated on December 26, 2006, following the incidents set forth in factual finding numbers 3 and 4. However, there are differences in her present path that point to a positive future.

7. Respondent's sobriety date is October 9, 2008, the day she entered the intensive 90-day treatment program at Casa Serena, a residential treatment facility for women. As Main House Counselor Kathleen Phalen (Phalen) and Grad House Counselor Carmen Uribe (Uribe) confirmed, respondent adhered to the program's strict requirements. Respondent was not allowed to have outside contacts, was required to examine her addiction during and after multiple counseling sessions, and was required to work and live by the many other rules of the home. After the initial 90 days, respondent moved to one of the graduate houses where she continues to reside, working on her recovery and her sober reintegration into the community. Phalen and Uribe attest to respondent's continuing commitment to her sobriety. Respondent attends daily Alcoholics Anonymous meetings, and is in daily contact with her sponsor, Natalie Richardson (Richardson).

8. Respondent realizes the seriousness of her addiction and is undertaking her recovery with greater reliance in God and prayer than before. She is steadily and conscientiously working through the steps to recovery.

9. Richardson has been respondent's sponsor since October 2008. By her actions, respondent demonstrates the desire to work on her sobriety. Richardson confirmed that they speak on a daily basis and that they meet in person at least once per week.

² This program was ordered by the court pursuant to Penal Code section 1000 (deferred entry of judgment), following the incident set forth in factual finding number 5.

10. Respondent enjoys working as a nurse, and there is no evidence of substance abuse at work. She stopped working as a nurse approximately two years ago, as she was concerned about her ability to safely practice nursing while she battled her substance abuse.

11. The Board has incurred costs in connection with the investigation and prosecution of this matter. It has been charged \$9,380.75 by the Attorney General's office. Absent argument or contrary evidence, these costs are deemed reasonable.

12. Respondent is working as a waitress. This job brings her face to face with one of her drugs of choice, and she has successfully fought off the temptation to drink alcoholic beverages. However, the job does not pay enough for her to be able to pay the Board's costs of investigation and prosecution.

LEGAL CONCLUSIONS

1. Grounds exist to suspend or revoke respondent's license pursuant to Business and Professions Code sections 2761, subdivisions (a) and (d), and 2762, subdivision (a), in that she engaged in unprofessional conduct by unlawfully obtaining, possessing, and administering to herself controlled substances, by reason of factual finding numbers 3, 4, and 5.

2. Cause exists, pursuant to Business and Professions Code section 125.3, to order respondent to pay the Board's costs of investigation and adjudication in this matter, by reason of factual finding number 11 and legal conclusion number 1.

In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost regulation similar to Business and Professions Code section 125.3. In so doing, however, the Court directed the administrative law judge and the agency to evaluate several factors to ensure that the cost provision did not deter individuals from exercising their right to a hearing. Thus, an agency must not assess the full costs where it would unfairly penalize the respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the agency must consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge; the agency must consider a respondent's ability to pay; and the agency may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct. (*Zuckerman v. State Board of Chiropractic Examiners, supra* at p. 45).

In this case, respondent is working as a waitress and is unable to pay the Board's costs of investigation and prosecution.

3. All evidence submitted in mitigation and rehabilitation has been considered. In brief, respondent is serious about her recovery and is making strides toward defeating her addiction. However, her period of sobriety is very short, and, in light of her prior track record of relapses, a longer period of sobriety is necessary before she can safely practice nursing. Accordingly, the order that follows is necessary for the protection of the public.

ORDER

1. Registered Nurse License 662487 issued to respondent Chantel Michael Smith, also known as Chantel Michael Jeffers, is revoked.

2. Complainant's request for investigation and prosecution costs is denied.

DATED: 4/17/09



SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings

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of the State of California
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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2008-34

12 CHANTEL MICHAEL SMITH
13 8800 Loma Vista Road
Apple Valley, CA 92308

ACCUSATION

14 Registered Nurse License No. 622487

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Ruth Ann Terry, M.P.H, R.N (Complainant) brings this Accusation solely
20 in her official capacity as the Executive Officer of the Board of Registered Nursing (Board),
21 Department of Consumer Affairs.

22 2. On or about July 24, 2003, the Board issued Registered Nurse License No.
23 622487 to Chantel Michael Smith (Respondent). The Registered Nurse License was in full force
24 and effect at all times relevant to the charges brought herein and will expire on October 31, 2008,
25 unless renewed.

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1 been convicted of a crime, if the crime is substantially related to the qualifications, functions, or
2 duties of the business or profession for which the license was issued. A conviction within the
3 meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo
4 contendere.”

5 8. Penal Code section 1016 states in pertinent part:

6 “The court shall ascertain whether the defendant completely understands that a
7 plea of nolo contendere shall be considered the same as a plea of guilty and that, upon a plea of
8 nolo contendere, the court shall find the defendant guilty. The legal effect of such a plea, to a
9 crime punishable as a felony, shall be the same as that of a plea of guilty for all purposes.”

10 9. Section 492 of the Code states that notwithstanding any other provision of
11 law, successful completion of any diversion program under the Penal Code shall not prohibit the
12 Board from taking disciplinary action against a licensee or from denying a license for
13 professional misconduct, notwithstanding that the evidence of that misconduct may be recorded
14 in a record pertaining to an arrest.

15 10. Section 2761 of the Code states:

16 “The board may take disciplinary action against a certified or licensed nurse or
17 deny an application for a certificate or license for any of the following:

18 “(a) Unprofessional conduct, which includes, but is not limited to, the following:

19

20 “(d) Violating or attempting to violate, directly or indirectly, or assisting in or
21 abetting the violating of, or conspiring to violate any provision or term of this chapter [the
22 Nursing Practice Act] or regulations adopted pursuant to it.”

23 11. Section 2762 of the Code states:

24 “In addition to other acts constituting unprofessional conduct within the meaning
25 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed
26 under this chapter to do any of the following:

27 “(a) Obtain or possess in violation of law, or prescribe, or except as directed by a
28 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish

1 or administer to another, any controlled substance as defined in Division 10 (commencing with
2 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
3 defined in Section 4022.

4 “(b) Use any controlled substance as defined in Division 10 (commencing with
5 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as
6 defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or
7 injurious to himself or herself, any other person, or the public or to the extent that such use
8 impairs his or her ability to conduct with safety to the public the practice authorized by his or her
9 license.”

10 12. Health and Safety Code section 11350 states:

11 “Except as otherwise provided in this division, every person who possesses (1)
12 any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
13 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
14 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
15 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
16 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
17 licensed to practice in this state, shall be punished by imprisonment in the state prison.”

18 13. Section 125.3 of the Code provides, in pertinent part, that the Board may
19 request the administrative law judge to direct a licensee found to have committed a violation or
20 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
21 and enforcement of the case.

22 14. CONTROLLED SUBSTANCES

23 A. “Cocaine,” is a Schedule II controlled substance as designated by Health
24 and Safety Code section 11055(b)(6) and is categorized as a “dangerous drug” pursuant to
25 Business and Professions Code section 4022.

26 B. “Marijuana,” is a Schedule I controlled substance as designated by Health
27 and Safety Code section 11054(d)(13) and is categorized as a “dangerous drug” pursuant to
28 Business and Professions Code section 4022.

1 C. "Morphine," is a Schedule II controlled substance as designated by Health
2 and Safety Code section 11055(b)(1)(M) and is categorized as a "dangerous drug" pursuant to
3 Business and Professions Code section 4022.

4 D. "Vicodin," is a Schedule III controlled substance as designated by Health
5 and Safety Code section 11056(e) and is categorized as a "dangerous drug" pursuant to Business
6 and Professions Code section 4022.

7 E. "Xanax," a brand name for alprazolam and an anti-anxiety benzodiazepin.
8 It is a Schedule IV controlled substance as designated by Health and Safety Code section
9 11057(d)(1) and is categorized as a "dangerous drug" pursuant to Business and Professions Code
10 section 4022.

11 FIRST CAUSE FOR DISCIPLINE

12 (Unprofessional Conduct: Possession of a Controlled Substance)

13 15. Respondent's license is subject to discipline pursuant to section 2761,
14 subdivision (a), on the grounds of unprofessional conduct as defined in section 2762, subdivision
15 (a), for violating Health and Safety Code section 11350, in that on or about January 2, 2007,
16 Respondent was arrested for possession of the controlled substance cocaine. The circumstances
17 are as follows:

18 (a) On or about February 22, 2007, Respondent was convicted on a plea of
19 nolo contendere for violating Health and Safety Code section 11350 (a) (felony possession of a
20 controlled substance), in the Santa Barbara County Superior Court Case No. 1217115, entitled
21 *The People of the State of California vs. Chantel Michael Smith*. The circumstances surrounding
22 the conviction are that on or about January 2, 2007, Respondent was arrested for possession of
23 approximately 3.0 ounces of cocaine. On or about February 22, 2007, Respondent was granted
24 deferred entry of judgment pursuant to Penal Code section 1000 et seq.

25 SECOND CAUSE FOR DISCIPLINE

26 (Unprofessional Conduct: Use of a Controlled Substance)

27 16. Respondent's license is subject to discipline pursuant to section 2761,
28 subdivision (a), on the grounds of unprofessional conduct, as defined in section 2762,

1 subdivision (b), in that on or about August 12, 2006, and on or around November 9, 2006,
2 Respondent, by her own admission, used dangerous drugs and/or alcoholic beverages to an extent
3 or in a manner dangerous or injurious to herself and/or the public to the extent that such use
4 would impair her ability to conduct with safety to the public the practice of registered nursing.
5 The circumstances are as follows:

6 (a) On or about August 12, 2006, Respondent, by her own admission, used the
7 controlled substances and/or dangerous drugs Xanax, Vicodin, and Marijuana while participating
8 in the Board's Diversion Recovery Program.

9 (b) On or about November 9, 2006, Respondent admitted to her diversion
10 consultant that she had been on a "binge" using cocaine and alcohol for approximately one
11 month while participating in the Board's Diversion Recovery Program. Respondent further
12 admitted that she subsequently suffered grand mal seizures and was admitted to a psychiatric
13 unit.

14 FACTORS IN AGGRAVATION

15 17. In March 2005, Respondent was self-referred to the Board's Diversion
16 Recovery Program following her employment termination in a telemetry unit for diverting
17 Morphine. On or about December 29, 2006, the Diversion Evaluation Committee terminated
18 Respondent from the program for reasons other than successful completion of the program.
19 Respondent was terminated unsuccessfully from the treatment program for being a public risk.
20 Respondent has been non-compliant with the program in total since approximately October 30,
21 2006, to present.

22 PRAYER

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein
24 alleged and that, following the hearing, the Board issue a decision:

- 25 1. Revoking or suspending Registered Nurse License No. 622487 issued to
26 Chantel Michael Smith;
- 27 2. Ordering Chantel Michael Smith to pay the Board the reasonable costs of
28 the investigation and enforcement of this case pursuant to Business and Professions Code section

1 125.3;

2 3. Taking such other and further action as deemed necessary and proper.

3

4 DATED: 7/31/07

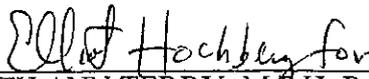
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RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
State of California
Complainant

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